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18 U.S. BANK NATIONAL ASSOCIATION

19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA
21 FRESNO DIVISION

22 METROPOLITAN LIFE INSURANCE
23 COMPANY, a New York corporation,

24 Plaintiff,

25 v.

26 ACDF, LLC, a California limited liability
27 company, as successor by merger to 104
28 PARTNERS, LLC; WILLOW AVENUE
INVESTMENTS, LLC, a California limited
liability company; ASHLAN & HAYES
INVESTMENTS, LLC, a California limited
liability company; GRANTOR FRESNO
CLOVIS INVESTMENTS, LLC, a California
limited liability company; MARICOPA
ORCHARDS, LLC, a California limited
liability company; FARID ASSEMI, an
individual; FARSHID ASSEMI, an individual;
DARIUS ASSEMI, an individual; and DOES 1
through 100, inclusive,
Defendants.

Case No. 1:24-cv-01261-KES-SAB

**INTERVENOR U.S. BANK NATIONAL
ASSOCIATION'S PRECAUTIONARY
OBJECTION TO RECEIVER'S
MOTION FOR SALE OF CHERRY
FARMLAND**

1 The Receiver has moved for an order authorizing him to sell certain cherry farmland real
 2 property and improvements (the “Subject Property”). (DKT 123; hereafter, the “Motion”).
 3 Intervenor U.S. Bank files this precautionary objection to ensure that such sale is not “free and
 4 clear” of the bank’s security interest in the growing crops¹ on the Subject Property, absent U.S.
 5 Bank’s consent.

6 For many years, U.S. Bank and its predecessor MUFG Union Bank provided a revolving
 7 line of credit (the “Crop Loan”) to the farming entity defendants in this case and other farming
 8 entities owned by the Assemis (collectively, the “Borrowers”). Borrowers used the Crop Loan to
 9 finance their farming operations. FNF Farms, LLC and Willow Avenue Investments, LLC, which
 10 own the Subject Property, are Crop Loan Borrowers. The principal balance of the Crop Loan is
 11 approximately \$160 million, and the Borrowers are jointly and severally obligated to repay that
 12 loan. The Crop Loan is secured by, among other things, a security interest in all of Borrowers’
 13 crops and the proceeds thereof.

14 Section 8 of the Motion provides that “[t]he sale will only be free and clear of liens that are
 15 consensually removed from the Property through escrow. All other rights, claims, interests or
 16 encumbrances *running with the land* shall remain.... MetLife will release its lien in consideration
 17 of payment of the net sale proceeds from closing up to the amount of MetLife’s secured claim.”
 18 (emphasis added)

19 The first sentence suggests that the sale will not be free and clear of U.S. Bank’s security
 20 interest in growing crops unless the bank consents. However, the qualifier in the second sentence
 21 with respect to preservation of interests “running with the land” raises a question, as a personal
 22 property security interest is not typically viewed as running with the land. This concern is
 23 heightened by the statement on page 11 of the Motion that “[t]here are no other known liens,
 24 interests or encumbrances, other than those that run with the land.” The Receiver knows or should
 25 know that U.S. Bank has a security interest in the growing crops on the Subject Property. Finally,
 26 the Purchase and Sale Agreement itself states in Section 3.2 that “[a]t the Closing, Seller shall
 27

28 ¹ Growing crops are defined as part of the “Improvements” being sold under the Purchase and Sale Agreement.

convey and transfer to Purchaser fee simple title to the Land and the Improvements, free and clear of any and all liens and encumbrances other than the Permitted Exceptions.” Since “Improvements” are defined to include growing crops, this reinforces the concern that the Receiver is attempting to sell those crops free and clear of U.S. Bank’s security.

The Motion proposes to pay the net sale proceeds to MetLife “up to the amount of MetLife’s secured claim,” but does not provide any evidence of the amount of the particular MetLife claim secured by the Subject Property. The Receiver has offered no authority to support the sale free and clear of U.S. Bank’s security interest. If there will be sufficient money left to pay U.S. Bank the value of the growing crops at closing, U.S. Bank would likely consent to such a sale. But if the sale proceeds will not be sufficient to pay MetLife’s secured claim with enough left over to pay the value of the growing crops to U.S. Bank, the bank will not consent to the sale, at least not until it has the relevant facts so it can determine who, as between MetLife and U.S. Bank, has senior priority in the growing crops, and the appropriate portion of the sale price to be paid to U.S. Bank if it has priority. Accordingly, at this time:

- U.S. Bank does **not** object to the proposed sale, or to the payment of net sale proceeds to MetLife, if the growing crops remain subject to U.S. Bank’s security interest post-sale; but
- U.S. Bank otherwise **objects** to the proposed sale free and clear of its security interest in the growing crops.

DATED April 7, 2025

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